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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re NATHANIEL P., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL P.,

Defendant and Appellant.

G051691

(Super. Ct. No. DL049519)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W. Clapp, Judge. Affirmed as modified.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Randall D. Einhorn and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

Appellant was placed on juvenile probation for vandalizing his mother's car, battering a police officer and resisting arrest. He contends his crimes resulted from an unlawful detention, and two of his probation conditions are invalid. Other than to modify the subject probation conditions, we affirm the judgment.

FACTS

On the morning of February 6, 2015, appellant, then age 13, did not feel like going to school. When his mother Maria and stepfather Jamie drove him there, he refused to get out of the car and demanded they take him to 17th and Spurgeon Street in Santa Ana so he could hang out with his friends. Instead, his parents drove the family to a Target store, where they dropped off appellant's sister for work. Jamie then suggested they all go inside the store to do some shopping. However, as they were walking up to the store, Jamie changed his mind, so they all started walking back to their car. Noticing appellant was the last one back, Jamie decided to "play" with him by locking him out of the car. This made appellant mad. After running around the car and banging on the windows, he pounded his fists on the hood in anger.

Jamie just laughed, but a woman in the parking lot who was watching the spectacle didn't think it was funny. After chiding Jamie for being mean to appellant, she called the police and reported what she saw. Maria also called the police. She not only told the 911 operator that appellant was banging on the hood of her car, she also reported appellant was a gang member who "wants to smoke pot all the time and didn't want to go to school."

Mark Shifflett was the first police officer to respond to the scene. After parking directly in front of the parents' car, he went up and spoke to Maria on the side of the car. Maria told Shifflett she could not control appellant or get him to go to school. She also explained how appellant had pounded on the hood of her car after Jamie locked him out of the vehicle. She said that in order to prevent further damage to her car she

unlocked the doors so appellant could get in the backseat, which is where he was when Shifflett arrived on the scene.

Shifflett inspected the hood of Maria's car and noticed it was pretty badly damaged. But because there were dents throughout the hood Shifflett was unable to tell which ones were caused by appellant. He therefore contacted appellant to get his side of the story. Try as he might to engage appellant in conversation, appellant refused to say anything. However, his three-year-old sister, who was seated next to him, was crying and upset. Given the situation, Shifflett grabbed appellant's arm, removed him from the car and sat him down on a nearby curb.

Around this time, Police Officer David Lima and another officer arrived at the scene.¹ Lima spoke to Maria while Shifflett kept his attention on appellant, who was acting sullen. The officers noticed appellant was wearing a hat and carrying a hooded sweatshirt that had colors and lettering associated with the Logan Street gang. When the officers informed Maria of the association she asked them to take the items so appellant would not fall victim to a gang crime. The officers obliged Maria's request, but when they took appellant's hat and hoodie, he became irate and called Maria a bitch and threatened to kill her. By this point, Maria had had enough. Exacerbated by appellant's behavior, she asked the officers to either release him to his biological father or take him to juvenile hall.

That, however, was easier said than done. As Maria was leaving the scene, Shifflett asked her if she wanted the headphones appellant had draped around his neck, and she said yes. When Shifflett grabbed the headphones, appellant punched him in the arm. Lima tried to restrain appellant, but he stood up and lunged toward Shifflett. Lima then put appellant in a "bear hug" and told him to calm down. However, appellant started kicking and elbowing Lima and yelling and spitting at the officers. Despite appellant's

¹ Lima responded to the scene based on a report of a boy "hitting a vehicle or fighting with his mother."

antics, the officers managed to handcuff him and walk him over to a police car. As they passed the back of the car, appellant kicked and dented the right rear quarter panel.

The officers then pushed appellant up against the squad car and told him to relax. But appellant kept yelling and told the officers to “go fuck themselves,” so they seat-belted him in the police car. Even then, appellant did not relent. He wiggled out of his seatbelt and began kicking, screaming and spitting in the back of the car. It wasn’t until the officers shackled appellant with leg restraints that he finally settled down and they were able to safely transport him to juvenile hall.

Testifying in appellant’s defense, Maria stated that although appellant was upset when Jamie locked him out of the car, he did not bang on the hood or damage the car in any way. She also claimed that she never told the police otherwise. While admitting appellant was acting very defiantly that day, Maria claimed the officers overreacted to the situation and handled appellant more forcibly than was necessary.

The trial court was somewhat sympathetic to this claim. In fact, it felt Shifflett went too far by taking appellant’s headphones without his permission. However, the court thought there was ample justification for the officers to detain appellant, and therefore it denied appellant’s motion to suppress the evidence of his crimes for want of reasonable suspicion. As for the substantive charges, the court sustained allegations appellant vandalized Maria’s car, battered Officer Lima and unlawfully resisted arrest. It placed appellant on probation subject to various conditions, including “modified gang terms.”

DISCUSSION

Legality of Appellant’s Detention

Appellant contends the trial court erred in denying his motion to suppress. In his view, there was no legal justification for the officers to detain him in the first place, and even if there was, the justification disappeared after the officers discovered he was

not involved in any criminal activity. We disagree with appellant's contentions and uphold the trial court's ruling.²

The applicable legal principles are well established. Consistent with the Fourth Amendment, the police may lawfully detain a suspect if they have reasonable suspicion to believe he or she has violated the law. (*In re Tony C.* (1979) 21 Cal.3d 888, 893.) Reasonable suspicion is measured by an objective standard, regardless of the officer's subjective intentions. (*Devenpeck v. Alford* (2004) 543 U.S. 146, 153.) It requires only that "the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

In this case, the officers went to the scene in response to a report of juvenile vandalism. And according to Officer Shifflett, that report was corroborated by Maria's statements and the dented condition of her car. Maria testified appellant did not damage her car, and she never told the officers that he did. However, in reviewing a suppression ruling, we view the evidence and resolve any evidentiary conflicts in favor of the trial court's ruling. (*People v. Tully* (2012) 54 Cal.4th 952, 979.) Thus, for purposes of the suppression issue, Shifflett's version of events is controlling. Based on his testimony, the objective circumstances were clearly such as to lead a reasonable person to believe appellant was involved in criminal activity, i.e., vandalism. This alone was sufficient to justify his detention.

Moreover, Education Code section 48264 authorizes the police to "arrest or assume temporary custody" of a minor who is absent from school without a valid excuse. The fact appellant was refusing to go to school and just wanted to hang out with his

² For purposes of this issue, we agree with appellant that he was detained when Shifflett parked his squad car in front of the family car and removed him. (See *People v. Kopatz* (2015) 61 Cal.4th 62, 79 [a police detention occurs when the circumstances are such that a reasonable person would feel he or she is not free to leave].)

friends provided further justification for the officers' actions. (See *In re Humberto O.* (2000) 80 Cal.App.4th 237, 240-244 [upholding search that was conducted in the course of a detention that was based on the minor's suspected truancy].) Considering all of the circumstances known to the officers, there was ample justification to detain appellant at the scene. Therefore, his detention was not unlawful.

Nor was it unduly prolonged. (See *People v. McGaughran* (1979) 25 Cal.3d 577, 586 [a detention exceeds constitutional bounds when it is extended beyond what is reasonably necessary to investigate the circumstances that justified it in the first place].) Appellant contends, "Even if the initial detention to investigate the claim of truancy and possible vandalism was proper, once Shifflett had dispelled his suspicions regarding these activities [he] no longer needed to detain appellant." But Shifflett's suspicions about appellant were *not* dispelled at the scene; rather, his investigation confirmed the reports that appellant had vandalized his mother's car and was refusing to go to school. In fact, Maria was so fed up with appellant's belligerent behavior she wanted the officers to take him off her hands.

During the course of the investigation, the officers also discovered appellant was wearing clothing associated with a local gang, and appellant's conduct became more violent with each passing minute. All things considered, his detention was not only justified at its inception but throughout the entire time he was being detained at the scene. Accordingly, there was no Fourth Amendment violation, and the juvenile court properly denied appellant's motion to suppress.

Legality of Appellant's Probation Conditions

At the disposition hearing, the trial court placed appellant on probation subject to the conditions that he not 1) "wear, display, use or possess any insignia, emblem, button, badge, cap, hat, scarf, bandana or any article of clothing which is evidence of affiliation with or membership in a gang," 2) "associate with gang members," or 3) "be present in any known gang gathering area as directed by [his] probation

officer.” Appellant contends these conditions are unlawful because they have no relationship to his crimes or future criminality. Although we reject this contention, we agree with appellant’s backup argument that the first two conditions should be modified to include a knowledge requirement.

Courts have broad discretion in formulating probation conditions, especially in cases involving juvenile offenders: “[E]ven where there is an invasion of protected freedoms ‘the power of the state to control the conduct of children reaches beyond the scope of its authority over adults’” [Citation.] This is because juveniles are deemed to be ‘more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.’ [Citation.] Thus, “‘a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’” [Citations.]” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.)

Nonetheless, when, as here, the subject probation conditions forbid conduct that is not itself criminal, the conditions must be reasonably related to the minor’s crimes or his future criminality. (*People v. Moran* (2016) 1 Cal.5th 398, 403.) In examining that issue, we employ the abuse of discretion standard, meaning we will not disturb the subject conditions as being violative of the reasonable relationship requirement unless a manifest abuse of discretion appears. (*Ibid.*)

Here, the trial court carefully assessed appellant’s situation in deciding to impose the subject gang conditions. At the disposition hearing, it heard testimony from appellant’s mother Maria, who said appellant had been getting in a lot of trouble lately due to his poor temperament and lack of guidance and support.³ Knowing this, the court was understandably concerned that if appellant was not getting enough attention and support at home, he would seek it “in ways that [he] shouldn’t,” such as by joining a

³ In fact, appellant was already on probation when this case arose.

gang. This was not merely a theoretical concern because, according to Officers Shifflett and Lima, appellant was wearing clothing associated with the Logan Street gang when he was contacted at the scene. While the officers were not shown to be “gang experts,” the court believed they were experienced enough to recognize when a juvenile was sporting gang colors and symbols. Considering the officers’ combined experience in law enforcement exceeds two decades, we have no occasion to question that belief.

If these circumstances were not enough to justify the gang conditions, there was also evidence appellant was shirking school and prone to violent behavior. Indeed, the trial court characterized appellant’s actions in the present case as “outrageous” and “out of control.” In light of all these considerations, the court was justified in believing appellant was in danger of falling under the influence of a criminal street gang and that the subject gang terms were reasonably related to his future criminality. It did not abuse its discretion in imposing them. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 623-626; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500-1502.)

However, as the Attorney General concedes, the conditions must be modified to ensure appellant knows what conduct is expected of him. In particular, concerns about vagueness and due process mandate that appellant only be prohibited from wearing clothing he *knows* is indicative of gang affiliation and from associating with people he *knows* are gang members. (See *People v. Freitas* (2009) 179 Cal.App.4th 747, 752 [in modifying defendant’s probation conditions to include a knowledge requirement, the court emphasized “the law has no legitimate interest in punishing an innocent citizen who has no knowledge of” the particular person, place or object he is required to avoid].) We will therefore modify two of appellant’s gang terms to include this scienter requirement.⁴

⁴ The third gang condition does not need any modification because by requiring appellant to steer clear of “known” gang gathering areas it is sufficiently precise to pass constitutional muster.

DISPOSITION

The first two gang conditions of appellant's probation are modified as follows: 1) Appellant shall not wear, display, use or possess any insignia, emblem, button, badge, cap, hat, scarf, bandana or any article of clothing he knows is evidence of affiliation with or membership in a gang; and 2) appellant shall not associate with any person he knows is a gang member. In all other respects, the judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.